

AMENDED IN ASSEMBLY JULY 6, 2011

AMENDED IN ASSEMBLY JUNE 23, 2011

AMENDED IN SENATE MAY 11, 2011

AMENDED IN SENATE MAY 3, 2011

AMENDED IN SENATE APRIL 25, 2011

## SENATE BILL

**No. 618**

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### **Introduced by Senator Wolk**

(Principal coauthor: Assembly Member V. Manuel Pérez)

~~(Coauthor : Assembly Member Alejo)~~

*(Coauthors: Assembly Members Alejo and Galgiani)*

February 18, 2011

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An act to add Section 51255.1 to, and to add Chapter 6.9 (commencing with Section 51190) to Part 1 of Division 1 of Title 5 of, the Government Code, and to amend Section 402.1 of the Revenue and Taxation Code, relating to local government.

#### LEGISLATIVE COUNSEL'S DIGEST

SB 618, as amended, Wolk. Local government: solar-use easement.

(1) Existing law, the Williamson Act, authorizes a city or county to enter into 10-year contracts with owners of land devoted to agricultural use, whereby the owners agree to continue using the property for that purpose, and the city or county agrees to value the land accordingly for purposes of property taxation. Existing law authorizes the parties to a Williamson Act contract to mutually agree to rescind a contract under the act in order to simultaneously enter into an open-space easement for a certain period of years.

This bill would authorize the parties to a Williamson Act contract to mutually agree to rescind the contract in order to simultaneously enter into a solar-use easement that would require that the land be used for solar photovoltaic facilities for a term no less than 10 years. This bill would require a county or city to include certain, and authorizes a county or city to include other, restrictions, conditions, or covenants in the deed or instrument granting a solar-use easement. This bill would provide that a solar-use easement would be automatically renewed annually, unless either party filed a notice of nonrenewal. This bill would provide that a solar-use easement may only be extinguished on all or a portion of the parcel by nonrenewal, termination, or by returning the land to its previous contract under the Williamson Act. This bill would require that if the landowner extinguishes the contract either by filing a notice of nonrenewal or by terminating the solar-use easement, the landowner shall restore the property to the conditions that existed before the easement by the time the easement terminates. This bill would authorize a landowner to terminate a solar-use easement by complying with certain procedures, and paying a termination fee based upon the termination value of the property, as determined by the county assessor. This bill would provide that specified parties may bring an action to enforce the easement if it is violated.

(2) Existing law requires the county assessor to consider, when valuing real property for property taxation purposes, the effect of any enforceable restrictions to which the use of the land may be subjected. Under existing law these restrictions include, but are not limited to, zoning, recorded contracts with governmental agencies, and various other restrictions imposed by governments.

This bill would also require the county assessor to consider, when valuing real property for property taxation purposes, solar-use easements. By changing the manner in which county assessors assess property for property taxation purposes, this bill would impose a state-mandated local program.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. The Legislature hereby finds and declares all of  
2     the following:
- 3     (a) The California Land Conservation Act of 1965 that has  
4     become known nationwide as the Williamson Act is critical to the  
5     welfare of the people of our state and nation.
- 6     (b) The Williamson Act provides a statutory framework for  
7     local implementation of California's most effective farm and ranch  
8     land preservation program, protecting over 16.5 million acres or  
9     nearly one-third of all privately owned land in California.
- 10    (c) The long-term conservation of agricultural and open-space  
11    land ensures that a steady supply of high-quality, low-cost fresh  
12    foods is available to urban residents, provides open-space uses  
13    that benefit the public seeking escape from the closeness of urban  
14    society, protects watersheds and vast areas of wildlife habitat, and  
15    conserves world-class agricultural soils.
- 16    (d) On April 12, 2011, Governor Brown signed legislation that  
17    requires one-third of the state's electricity to come from renewable  
18    sources by December 31, 2020.
- 19    (e) In establishing the 33 percent California Renewables  
20    Portfolio Standard Program (RPS program), there will be many  
21    important benefits to California, including new investment in green  
22    technologies in the state, job creation, improvements in local air  
23    quality, energy independence, and a reduction in greenhouse gas  
24    emissions.
- 25    (f) Utility scale photovoltaic electrical energy production is  
26    crucial to achieving and hopefully exceeding California's RPS  
27    program goals.
- 28    (g) Encouraging utility scale photovoltaic energy facilities on  
29    marginally productive or physically impaired land by providing  
30    expedited termination of Williamson Act contracts, without  
31    penalty, will protect the many statewide benefits of the program  
32    while providing significant economic incentives for new solar  
33    power development.
- 34    (h) In enacting Section 3 of this act, it is the intent of the  
35    Legislature to provide an additional method for terminating a

Williamson Act contract, in addition to those methods already authorized by statute, for the purpose of encouraging the development of utility scale solar photovoltaic facilities on marginally productive or physically impaired farmland. It is not intended to be the exclusive method of contract termination, nor of Williamson Act compliance for solar facilities, but merely another option that is consistent with the constitutional limitations of Section 8 of Article XIII of the California Constitution.

SEC. 2. Chapter 6.9 (commencing with Section 51190) is added to Part 1 of Division 1 of Title 5 of the Government Code, to read:

#### CHAPTER 6.9. SOLAR-USE EASEMENT

##### Article 1. Definitions

51190. As used in this chapter, the following terms have the following meanings:

(a) “Agricultural activities” has the same meaning as defined in subdivision (e) of Section 3482.5 of the Civil Code except for livestock production, notwithstanding the periodic use of the land for the production and utilization of forage.

(b) “Marginally productive” means parcels consisting predominately of soil with significantly reduced agricultural productivity due to chemical or physical limitations. A parcel of land may be designated as marginally productive pursuant to this paragraph if both of the following apply:

(1) The parcel was not irrigated for agricultural ~~purposes~~ *activities* during the prior six years.

(2) Use of the parcel is significantly limited for agricultural activities due to its topography, drainage, flooding, adverse soil conditions, or other physical reasons.

(c) “Physically impaired land” means land with severely adverse soil conditions that are detrimental to continued agricultural cultivation and production. Severely adverse soil conditions may include, but are not limited to, contamination by salts or selenium, or other naturally occurring contaminants. ~~The Secretary of Food and Agriculture may consult with the Secretary of the Natural Resources Agency and consider information from the agricultural commissioner in the county where the land is located.~~

(d) A parcel shall be designated as marginally productive or physically impaired under this subdivision based on substantial evidence in the public record, and this designation shall be approved by the Director of Conservation. The Director of Conservation may consult with the Secretary of Food and Agriculture and consider information from the agricultural commissioner in the county where the land is located.

(e) “City” means any city or city and county.

(f) “Landowner” includes a lessee or trustee, if the expiration of the lease or trust occurs at a time later than the expiration of the restriction of the use of the land to photovoltaic solar facilities or any extension of the restriction.

(g) “Solar-use easement” means any right or interest acquired by a county, or city in perpetuity or for a term of years on marginally productive or physically impaired lands pursuant to this chapter where the deed or other instrument granting the right or interest imposes restrictions that, through limitation of future use, will effectively restrict the use of the land to photovoltaic solar facilities for the purpose of providing for the collection and distribution of solar energy for the generation of electricity, and any other incidental or subordinate agricultural, open-space uses, or other alternative renewable energy facilities. A solar-use easement shall not permit any land located in the easement to be used for any other use allowed in commercial, industrial, or residential zones. A solar-use easement shall contain a covenant with the county, or city running with the land, either in perpetuity or for a term of years, that the landowner shall not construct or permit the construction of improvements except those for which the right is expressly reserved in the instrument provided that those reservations would not be inconsistent with the purposes of this chapter and which would not be incompatible with the sole use of the property for solar photovoltaic facilities.

## Article 2. General Provisions

51191. Any county or city may enter into an agreement with a landowner pursuant to Section 51255.1 to hold marginally productive or physically impaired land in a solar-use easement in the manner provided in this chapter.

1     51191.1. The execution and acceptance of a deed or other  
2 instrument described in subdivision (g) of Section 51190 shall  
3 constitute a dedication to the public of the use of the marginally  
4 productive or physically impaired lands for solar photovoltaic use  
5 for the term specified. Any such easement and covenant shall run  
6 for a term of not less than 10 years. A solar-use easement for a  
7 term of years shall provide that on the anniversary date of the  
8 acceptance of the solar-use easement, or on any other annual date  
9 as specified by the deed or other instrument described in  
10 subdivision (g) of Section 51190, a year shall be added  
11 automatically to the initial term unless a notice of nonrenewal is  
12 given as provided in Section 51192.

13     51191.2. (a) A county or city may require a deed or other  
14 instrument described in subdivision (g) of Section 51190 to contain  
15 any restrictions, conditions, or covenants as are necessary or  
16 desirable to restrict the use of the land to photovoltaic solar  
17 facilities.

18     (b) The restrictions, conditions, or covenants may include, but  
19 are not limited to, the following:

20     (1) Mitigation measures on the land that is subject to the  
21 solar-use easement.

22     (2) Mitigation measures beyond the land that is subject to the  
23 solar-use easement.

24     (3) Performance bonds or other securities to fund, upon the  
25 cessation of the solar photovoltaic use, the restoration of the land  
26 that is subject to the easement to the conditions that existed before  
27 the approval or acceptance of that easement by the time that the  
28 easement terminates.

29     (4) Provision for necessary amendments by the parties provided  
30 that the amendments are consistent with the provisions of this  
31 chapter.

32     (c) For term easements, the restrictions, conditions, or covenants  
33 shall include a requirement for the landowner to post a performance  
34 bond or other securities to fund the restoration of the land that is  
35 subject to the easement to the conditions that existed before the  
36 approval or acceptance of the easement by the time the easement  
37 terminates.

38     51191.3. No deed or other instrument described in subdivision  
39 (g) of Section 51190 shall be effective until it has been accepted

1 or approved by resolution of the governing body of the county or  
2 city and its acceptance endorsed thereon.

3 51191.4. (a) During the term of the solar-use easement, the  
4 county or city shall not approve any land use that is inconsistent  
5 with the easement, and no building permit may be issued for any  
6 structure that would violate the easement. The county or city shall  
7 seek, by appropriate proceedings, an injunction against any  
8 threatened construction or other development or activity on the  
9 land that would violate the easement and shall seek a mandatory  
10 injunction requiring the removal of any structure erected in  
11 violation of the easement.

12 If the county or city fails to seek an injunction against any  
13 threatened construction or other development or activity on the  
14 land that would violate the easement or to seek a mandatory  
15 injunction requiring the removal of any structure erected in  
16 violation of the easement, or if the county or city should construct  
17 any structure or development or conduct or permit any activity in  
18 violation of the easement, a person or entity may, by appropriate  
19 proceedings, seek an injunction.

20 (b) The court may award to a plaintiff who prevails in an action  
21 authorized by this section his or her cost of litigation, including  
22 reasonable attorney's fees.

23 (c) Nothing in this chapter shall limit the power of the state or  
24 any county, city, school district, or any other local public district,  
25 agency, or entity, or any other person authorized by law, to acquire  
26 land subject to a solar-use easement by eminent domain.

27 51191.5. Upon the acceptance or approval of any instrument  
28 creating a solar-use easement, the clerk of the governing body  
29 shall record the instrument in the office of the county recorder and  
30 file a copy with the county assessor. After the easement is recorded,  
31 it shall impart notice to all persons under the recording laws of  
32 this state.

33 51191.6. The parcel or parcels subject to a solar-use easement  
34 shall be assessed pursuant to Section 402.1 of the Revenue and  
35 Taxation Code during the term of the easement.

36 51191.7. The Department of Conservation may adopt  
37 regulations pursuant to the Administrative ~~Procedures~~ *Procedure*  
38 Act (Chapter 3.5 (commencing with Section 11340) of Division  
39 3 of Title 2) for the implementation of this chapter.

1 Article 3. Extinguishment of a Solar-Use Easement

2  
3 51192. (a) A solar-use easement may be extinguished on all  
4 or a portion of the parcel only by nonrenewal, termination, or by  
5 returning the land to its previous contract pursuant to Article 3  
6 (commencing with Section 51240) of Chapter 7.

7 (b) (1) If either the landowner or the county or city desires in  
8 any year not to renew the solar-use easement on all or a portion  
9 of the parcel, that party shall serve written notice of nonrenewal  
10 of the easement upon the other party at least 90 days in advance  
11 of the annual renewal date of the solar-use easement. Unless written  
12 notice is served at least 90 days in advance of the renewal date,  
13 the solar-use easement shall be considered renewed as provided  
14 in Section 51191.1.

15 (2) Upon receipt by the owner of a notice from the county or  
16 city of nonrenewal, the owner may make a written protest of the  
17 notice of nonrenewal. The county or city may, at any time prior  
18 to the renewal date, withdraw the notice of nonrenewal.

19 (c) If the county, city, or the landowner serves notice of intent  
20 in any year not to renew the solar-use easement, the existing  
21 solar-use easement shall remain in effect for the balance of the  
22 period remaining since the original execution or the last renewal  
23 of the solar-use easement, as the case may be.

24 51192.1. In the case of a solar-use easement that is extinguished  
25 because of a notice of nonrenewal by the landowner or due to  
26 termination, the landowner shall restore the land that is subject to  
27 the easement to the conditions that existed before the approval of  
28 the easement by the time the easement terminates.

29 51192.2. (a) If all or a portion of the parcel held in a solar-use  
30 easement will no longer be used for the purposes outlined in the  
31 easement the landowner may petition the county or city to approve  
32 termination of the easement.

33 (b) Prior to any action by the county or city giving tentative  
34 approval to the termination of any easement, the county assessor  
35 of the county in which the land is located shall determine the  
36 current fair market value of the parcel or parcels to be terminated  
37 as though the parcel or parcels were free of the easement restriction.  
38 The assessor shall certify to the county or city the termination  
39 valuation of the parcel or parcels for the purpose of determining  
40 the termination fee. At the same time, the assessor shall send a



1 notice to the landowner and the Department of Conservation  
2 indicating the current fair market value of the parcel or parcels as  
3 though the parcel or parcels were free of the easement restriction  
4 and advise the parties, that upon their request, the assessor shall  
5 provide all information relevant to the valuation, excluding  
6 third-party information. If any information is confidential or  
7 otherwise protected from release, the department and the landowner  
8 shall hold it as confidential and return or destroy any protected  
9 information upon completion of all actions relating to valuation  
10 or termination of the easement on the property. The notice shall  
11 also advise the landowner and the department of the opportunity  
12 to request formal review from the assessor.

13 (c) Prior to giving tentative approval to the termination of any  
14 easement, the county or city shall determine and certify to the  
15 county auditor the amount of the termination fee that the landowner  
16 shall pay the county treasurer upon termination. That fee shall be  
17 an amount equal to 12½ percent of the termination valuation of  
18 the property.

19 (d) If it finds that it is in the public interest to do so, the county  
20 or city may waive any payment or any portion of a payment by  
21 the landowner, or may extend the time for making the payment or  
22 a portion of the payment contingent upon the future use made of  
23 the parcel or parcels and the parcel or parcels economic return to  
24 the landowner for a period of time not to exceed the unexpired  
25 period of the easement, had it not been terminated, if both of the  
26 following occur:

27 (1) The termination is caused by an involuntary transfer or  
28 change in the use which may be made of the land and the land is  
29 not immediately suitable, nor will be immediately used, for a  
30 purpose which produces a greater economic return to the owner.

31 (2) The waiver or extension of time is approved by the Secretary  
32 of the Natural Resources Agency. The secretary shall approve a  
33 waiver or extension of time if the secretary finds that the granting  
34 of the waiver or extension of time by the county or city is consistent  
35 with the policies of this chapter and that the county or city complied  
36 with this article. In evaluating a request for a waiver or extension  
37 of time, the secretary shall review the findings of the county or  
38 city, the evidence in the record of the county or city, and any other  
39 evidence the secretary may receive concerning the abandonment,  
40 waiver, or extension of time.

1 (e) When termination fees required by this section are collected,  
2 they shall be transmitted by the county treasurer to the Controller  
3 and deposited in the General Fund.

4 (f) It is the intent of the Legislature that fees paid to terminate  
5 a contract do not constitute taxes but are payments that, when  
6 made, provide a private benefit that tends to increase the value of  
7 the property.

8 SEC. 3. Section 51255.1 is added to the Government Code, to  
9 read:

10 51255.1. (a) Notwithstanding any other provision of this  
11 chapter, the parties may upon their mutual agreement rescind a  
12 contract for a parcel or parcels of marginally productive or  
13 physically impaired lands, as defined in Section 51190, in order  
14 to simultaneously enter into a solar-use easement pursuant to  
15 Chapter 6.9 (commencing with Section 51190). This action may  
16 be taken notwithstanding the prior serving of a notice of  
17 nonrenewal.

18 (b) Nothing in this section limits the ability of the parties to a  
19 contract to seek nonrenewal, or petition for cancellation or  
20 termination of a contract pursuant to this chapter. This section is  
21 provided in addition to, not in replacement of, other methods for  
22 contract termination, Williamson Act compliance, or compatibility  
23 pursuant to this chapter.

24 SEC. 4. Section 402.1 of the Revenue and Taxation Code is  
25 amended to read:

26 402.1. (a) In the assessment of land, the assessor shall consider  
27 the effect upon value of any enforceable restrictions to which the  
28 use of the land may be subjected. These restrictions shall include,  
29 but are not limited to, all of the following:

30 (1) Zoning.

31 (2) Recorded contracts with governmental agencies other than  
32 those provided in Sections 422 and 422.5.

33 (3) Permit authority of, and permits issued by, governmental  
34 agencies exercising land use powers concurrently with local  
35 governments, including the California Coastal Commission and  
36 regional coastal commissions, the San Francisco Bay Conservation  
37 and Development Commission, and the Tahoe Regional Planning  
38 Agency.

1 (4) Development controls of a local government in accordance  
2 with any local coastal program certified pursuant to Division 20  
3 (commencing with Section 30000) of the Public Resources Code.

4 (5) Development controls of a local government in accordance  
5 with a local protection program, or any component thereof, certified  
6 pursuant to Division 19 (commencing with Section 29000) of the  
7 Public Resources Code.

8 (6) Environmental constraints applied to the use of land pursuant  
9 to provisions of statutes.

10 (7) Hazardous waste land use restriction pursuant to Section  
11 25240 of the Health and Safety Code.

12 (8) A recorded conservation, trail, or scenic easement, as  
13 described in Section 815.1 of the Civil Code, that is granted in  
14 favor of a public agency, or in favor of a nonprofit corporation  
15 organized pursuant to Section 501(c)(3) of the Internal Revenue  
16 Code that has as its primary purpose the preservation, protection,  
17 or enhancement of land in its natural, scenic, historical, agricultural,  
18 forested, or open-space condition or use.

19 (9) A solar-use easement pursuant to Chapter 6.9 (commencing  
20 with Section 51190) of Part 1 of Division 1 of Title 5 of the  
21 Government Code.

22 (b) There is a rebuttable presumption that restrictions will not  
23 be removed or substantially modified in the predictable future and  
24 that they will substantially equate the value of the land to the value  
25 attributable to the legally permissible use or uses.

26 (c) Grounds for rebutting the presumption may include, but are  
27 not necessarily limited to, the past history of like use restrictions  
28 in the jurisdiction in question and the similarity of sales prices for  
29 restricted and unrestricted land. The possible expiration of a  
30 restriction at a time certain shall not be conclusive evidence of the  
31 future removal or modification of the restriction unless there is no  
32 opportunity or likelihood of the continuation or renewal of the  
33 restriction, or unless a necessary party to the restriction has  
34 indicated an intent to permit its expiration at that time.

35 (d) In assessing land with respect to which the presumption is  
36 un rebutted, the assessor shall not consider sales of otherwise  
37 comparable land not similarly restricted as to use as indicative of  
38 value of land under restriction, unless the restrictions have a  
39 demonstrably minimal effect upon value.

(e) In assessing land under an enforceable use restriction wherein the presumption of no predictable removal or substantial modification of the restriction has been rebutted, but where the restriction nevertheless retains some future life and has some effect on present value, the assessor may consider, in addition to all other legally permissible information, representative sales of comparable lands that are not under restriction but upon which natural limitations have substantially the same effect as restrictions.

(f) For the purposes of this section the following definitions apply:

(1) “Comparable lands” are lands that are similar to the land being valued in respect to legally permissible uses and physical attributes.

(2) “Representative sales information” is information from sales of a sufficient number of comparable lands to give an accurate indication of the full cash value of the land being valued.

(g) It is hereby declared that the purpose and intent of the Legislature in enacting this section is to provide for a method of determining whether a sufficient amount of representative sales information is available for land under use restriction in order to ensure the accurate assessment of that land. It is also hereby declared that the further purpose and intent of the Legislature in enacting this section and Section 1630 is to avoid an assessment policy which, in the absence of special circumstances, considers uses for land that legally are not available to the owner and not contemplated by government, and that these sections are necessary to implement the public policy of encouraging and maintaining effective land use planning. Nothing in this statute shall be construed as requiring the assessment of any land at a value less than as required by Section 401 or as prohibiting the use of representative comparable sales information on land under similar restrictions when this information is available.

SEC. 5. If the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code.